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AT SEATTLE
CLERK U.S. DISTRICT COURT
BY WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TUAN THANH PHAN,

Defendant/Judgment Debtor,

and

HOFFMAN STRUCTURES, INC.,

Garnishee.

15-MS-122 RSL

(2:08-CR0401-006)

**Application for Writ of
Continuing Garnishment**

The United States of America, Plaintiff, makes application in accordance with 28 U.S.C. § 3205(b)(1) to the United States District Court for the Western District of Washington for an Order directing the Clerk of the United States District Court to issue a Writ of Continuing Garnishment to enforce the Judgment entered in *United States v. Tuan Thanh Phan*, No. 2:08-CR0401-006, United States District Court for the Western District of Washington (September 14, 2009), against Tuan Thanh Phan (hereinafter “Defendant/Judgment Debtor”), whose last known address is: Tuan Thanh Phan, 2627 S 150th St, Seatac, WA 98188. The judgment award is \$81,664.48, consisting of \$81,564.48 in Criminal Restitution, under the

1 Mandatory Victims Restitution Act ("MVRA"), 18 U.S.C. § 3663 *et seq.*, and \$100.00 in a
2 Special Assessment. The sum of \$23,315.06 has been credited to the judgment debt. A
3 balance of \$58,349.42 remains outstanding as of August 18, 2015. Demand for payment of the
4 above-stated debt was made upon the Defendant/Judgment Debtor not less than 30 days from
5 the date of this application and Defendant/Judgment Debtor has failed to satisfy the debt. *See*
6 Declaration of Dawn Fernandez in Support of Application for a Writ of Continuing
7 Garnishment.

8
9 The United States believes that the Garnishee owes or will owe money or property to
10 the Defendant/Judgment Debtor, or is in possession, custody or control of property of the
11 Defendant/Judgment Debtor, and the Defendant/Judgment Debtor holds a substantial
12 nonexempt interest in the money or property.
13

14 The name and address of the Garnishee or its authorized agent is:

15 Hoffman Structures, Inc.
16 Attn: Wendy Wynia at Payroll, Payroll Administrator
17 805 SW Broadway, Suite 2100
Portland, OR 97205

18
19 DATED this 26th day of August, 2015.

20
21 ANNETTE L. HAYES
United States Attorney

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KYLE A. FORSYTH, WSBA #34609
Assistant United States Attorney
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
Telephone: (206) 553-7970
Fax: (206) 553-4067
E-mail: kyle.forsyth@usdoj.gov

UNITED STATES DISTRICT COURT
Western District of Washington

UNITED STATES OF AMERICA

v.

TUAN THANH PHAN

Date of Original Judgment: 09/14/2009

(Or Date of Last Amended Judgment)

Reason for Amendment:

Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
 Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
 Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
 Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36).

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 2:08CR00401JLR-006

USM Number: 39113-086

James Louis Vonasch

Defendant's Attorney

Modification of Supervision Conditions (18 U.S.C. §§ 3563(e) or 3583(e))
 Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
 Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
 Direct Motion to District Court Pursuant
 28 U.S.C. § 2255 or 18 U.S.C. § 3559(e)(7)
 Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

pleaded guilty to count(s) 2 of the Indictment
 pleaded nolo contendere to count(s) _____ which was accepted by the court.
 was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 1344 and 2	Bank Fraud	09/03/2006	2

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

 The defendant has been found not guilty on count(s) _____ Count(s) 1, 3, and 6 is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

Assistant United States Attorney

September 14, 2009

Date of Imposition of Judgment

Signature of Judge

James L. Robart, U.S. District Judge

Name and Title of Judge

12 July 2013

Date

Exhibit 1

DEFENDANT: **TUAN THANH PHAN**
CASE NUMBER: **2:08CR00401JLR-006**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 18 months

The court makes the following recommendations to the Bureau of Prisons:

FCI Sheridan

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **TUAN THANH PHAN**
CASE NUMBER: **2:08CR00401JLR-006**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 4 years

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug and/or alcohol test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight valid tests per month, pursuant to 18 U.S.C. § 3563(a)(5) and 18 U.S.C. § 3583(d).

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer.
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: **TUAN THANH PHAN**
CASE NUMBER: **2:08CR00401JLR-006**

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate as instructed by the U.S. Probation Officer in a program approved by the probation office for treatment of narcotic addiction, drug dependency, or substance abuse, which may include testing to determine if defendant has reverted to the use of drugs or alcohol. The defendant shall also abstain from the use of alcohol and/or other intoxicants during the term of supervision. Defendant must contribute towards the cost of any programs, to the extent defendant is financially able to do so, as determined by the U.S. probation Officer.

The defendant shall submit his/her person, residence, office, safety deposit box, storage unit, property, or vehicle to a search, conducted by a U.S. Probation Officer or any other law enforcement officer, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation; the defendant shall notify any other residents that the premises may be subject to searches pursuant to this condition.

Restitution in the amount of *\$81,564.48 is due immediately. Any unpaid amount is to be paid during the period of supervision in month installments of not less than 10% of his or her gross monthly household income. Interest on the restitution shall be waived.

The defendant shall provide his or her probation officer with access to any requested financial information including authorization to conduct credit checks and obtain copies of the defendant's Federal Income Tax Return.

Case 2:08-cr-00401-JLR Document 190 Filed 07/15/15 Page 5 of 8

AO245C (Rev. 09/11) Amended Judgment in a Criminal Case
Sheet 5 — Criminal Monetary Penalties

(NOTE: Identify Changes with Asterisks(*):

Judgment — Page 5 of 8

DEFENDANT: TUAN THANH PHAN
CASE NUMBER: 2:08CR00401JLR-006

CRIMINAL MONETARY PENALTIES

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100	\$ Waived	\$ *81,564.48

The determination of restitution is deferred until _____ *An Amended Judgment in a Criminal Case (AO 245C)*
will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.
If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified
otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal
victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
TOTALS	\$ 0.00		*\$81,564.48

Restitution amount ordered pursuant to plea agreement \$ *81,564.48

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution

the interest requirement for the fine restitution is modified as follows:

The court finds the defendant is financially unable and is unlikely to become able to pay a fine and, accordingly, the imposition of a fine is waived.

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

Case 2:08-cr-00401-JLR Document 190 Filed 07/15/15 Page 6 of 8

AO245C (Rev. 09/11) Amended Judgment in a Criminal Case
Sheet 5B — Criminal Monetary Penalties

(NOTE: Identify Changes with Asterisks(*))

Judgment — Page 6 of 8

DEFENDANT: TUAN THANH PHAN
CASE NUMBER: 2:08CR00401JLR-006

ADDITIONAL RESTITUTION PAYEES

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
*American Express		\$441.54	
888 S. Figueroa St., Ste 1770			
P.O. Box 15730			
Citigroup Investigative Svcs			
14700 Citicorp Dr. Bldg 2, 1st Floor			
Attn: Nova Chesebro			
Beaverton, OR 97075			
*Keybank		\$1,520.38	
10 W. 2nd Street, OH-18-00-2503			

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

Case 2:08-cr-00401-JLR Document 190 Filed 07/15/15 Page 7 of 8

AO245C (Rev. 09/11) Amended Judgment in a Criminal Case
Sheet 5B — Criminal Monetary Penalties

(NOTE: Identify Changes with Asterisks(*)).

Judgment — Page 7 of 8

DEFENDANT: TUAN THANH PHAN
CASE NUMBER: 2:08CR00401JLR-006

ADDITIONAL RESTITUTION PAYEES

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

Case 2:08-cr-00401-JLR Document 190 Filed 07/15/15 Page 8 of 8

AO245C (Rev. 09/11) Amended Judgment in a Criminal Case
Sheet 6—Schedule of Payments

(NOTE: Identify Changes with Asterisks(*))

Judgment — Page 8 of 8

DEFENDANT: TUAN THANH PHAN
CASE NUMBER: 2:08CR00401JLR-006

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

PAYMENT IS DUE IMMEDIATELY. Any unpaid amount shall be paid to Clerk's Office, United States District Court, 700 Stewart Street, Seattle, WA 98101.

During the period of imprisonment, no less than 25% of their inmate gross monthly income or \$25.00 per quarter, whichever is greater, to be collected and disbursed in accordance with the Inmate Financial Responsibility Program.

During the period of supervised release, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after release from imprisonment.

During the period of probation, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after the date of this judgment.

The payment schedule above is the minimum amount that the defendant is expected to pay towards the monetary penalties imposed by the Court. The defendant shall pay more than the amount established whenever possible. The defendant must notify the Court, the United States Probation Office, and the United States Attorney's Office of any material change in the defendant's financial circumstances that might affect the ability to pay restitution.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program are made to the United States District Court, Western District of Washington. For restitution payments, the Clerk of the Court is to forward money received to the party(ies) designated to receive restitution specified on the Criminal Monetaries (Sheet 5) page.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

Andrew Whittecar, this cause number is joint and several as to *\$81,564.48

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.